

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND  
FUNERAL DIRECTORS AND KELLEY ANNETTE WERNER**

The State Board of Embalmers and Funeral Directors (the "Board") and Kelley Annette Werner ("Licensee" or "Werner") enter into this "Settlement Agreement Between State Board of Embalmers and Funeral Directors and Kelley Annette Werner" (the "Settlement Agreement") to resolve the question of whether Werner's funeral director and embalmer licenses should be subject to discipline and, if so, to agree on the appropriate level of discipline to impose on her licenses.

Pursuant to the terms of Section 536.060 RSMo<sup>1</sup>, the parties hereto waive the right to a hearing by the Administrative Hearing Commission and the right to a disciplinary hearing before the Board per Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Licensee acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against her; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against her and, subsequently, the right to a hearing before the Board at which time she may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against her licenses. Being aware of these rights provided to her by operation of law, Licensee knowingly

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to her.

Licensee acknowledges that she has received a copy of the investigative report and other documents relied upon by the Board in determining there is cause for discipline, along with citations to law and/or regulations the Board believes were violated and that she has been advised her right to seek legal counsel, at her expense, to assist her with this matter. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's licenses are subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621, RSMo.

#### **Relevant Statutes and Regulations**

1. Section 333.330.2, RSMo, authorizes discipline against funeral director and embalmer licenses and states, in relevant part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions, or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty, or an act of violence;

### **Joint Stipulation of Facts and Conclusions of Law**

The parties agree and stipulate to the following findings of fact and conclusions of law:

2. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

3. Kelley Annette Werner is an individual who has registered her address with the Board as 1444 Sunburst, O Fallon, Missouri 63366.

4. Werner holds funeral director license number 2000172126 that was and is current and active at all times relevant to this matter.

5. Werner holds embalmer license number 2001030432 that was and is current and active at all times relevant to this matter.

### **Conduct Giving Cause for Discipline**

6. Werner submitted her "Application to Renew Funeral Director June 1, 2014-May 31, 2016" to the Board that she indicated that she signed on April 18, 2014 (the "2014 Funeral Director Renewal").

7. Werner submitted her "Application to Renew Embalmers June 1, 2014 to May 31, 2016" to the Board that she indicated that she signed on April 18, 2014 (the "2014 Embalmer Renewal").

8. Werner answered "yes" to questions 5 and 7 on the 2014 Funeral Director Renewal and on the 2014 Embalmer Renewal that both asked the following:

5. Since the last renewal have you been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere of any federal, state or municipal law, ordinance or rule, whether or not sentence was imposed (includes suspended imposition of sentence (SIS)). If yes, attach a full explanation and provide

certified court documents (ie: Docket Sheet, information or Indictment and Final Disposition).

7. Since the last renewal have you been treated for drug or alcohol addiction? If yes, attach a full explanation and provide discharge summary or other official documentation that shows your diagnosis, prognosis and treatment plan.

9. Werner attached her statement explaining the answers on her 2014 Funeral Director Renewal and her 2014 Embalmer Renewal (the "Statement").

10. Werner also attached the requested documents.

11. On June 17, 2013, Werner plead guilty to Embezzlement and Theft of Public Money in violation of 18 U.S.C. §641.

12. 18 U.S.C. §641 states:

Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or

Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

13. To prove embezzlement, the Government must prove the following: that money or property described in indictment belonged to United States or agency thereof and had value in excess of \$100 at time alleged; that property lawfully came into possession or care of defendant,

and defendant fraudulently appropriated money or property to his own use or use of others; and that defendant did so knowingly and willfully with intent to either temporarily or permanently deprive owner of use of money or property so taken. *U.S. v. Burton*, C.A.11 (Ala.) 1989, 871 F.2d 1566.

14. To commit the offense of larceny there must occur a taking of property which is trespassory in nature without consent of owner. *Bennett v. U. S.*, C.A.9 (Cal.) 1968, 399 F.2d 740

15. On September 24, 2013, the Court sentenced Werner to five years probation subject to specified conditions, including participation in a substance abuse treatment program, and ordered that Werner pay restitution in the amount of \$80,944.80

#### *Causes for Discipline*

16. Werner plead guilty in a criminal prosecution under the laws of the United States an offense reasonably related to the qualifications, functions, and duties of a funeral director and an embalmer and said offense also contained an essentials element of fraud and dishonesty.

17. There is cause to discipline the funeral director and embalmer licenses held by Werner pursuant to Section 333.330.2(2), RSMo.

#### Jurisdiction and Venue

18. Jurisdiction and venue are proper.

#### Jointly Stipulated Disciplinary Order

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.330 and 621.045.3, RSMo:

19. Licensee's licenses to practice as a funeral director and embalmer are hereby placed on **PROBATION** for a period of **FIVE YEARS** from the effective date of this Settlement Agreement (the "Disciplinary Period"). During the Disciplinary Period, Werner shall be entitled to practice as a funeral director and embalmer, as defined in Chapters 333 and 436, RSMo, subject to the following terms and conditions of the Disciplinary Period:

Terms and Conditions of the Disciplinary Period

20. Licensee shall comply with the following terms and conditions during the Disciplinary Period:

General Requirements

- a. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with her current and active e-mail address;
- b. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. These compliance reports shall contain all other information required by this Settlement Agreement and shall be filed on forms supplied by the Board, if Licensee fails to receive the form from the Board, Licensee shall have the duty to contact the Board to request the form. Licensee shall complete each compliance report truthfully, completely and accurately;

- c. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;
- d. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- e. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active, including not allowing any license to be suspended for failure to comply with the revenue laws of the state;
- h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of the Disciplinary Period;
- i. Licensee shall not serve as the supervisor of any funeral director apprentice without the express written consent of the Board. If Licensee seeks to supervise a

funeral director apprentice, Licensee shall submit a written request to the Board that includes the name and address of the potential apprentice and a description of Licensee's ability to properly supervise an apprentice. No such apprenticeship shall commence until the Board has given its consent for Licensee to supervise the apprentice;

- j. Licensee shall comply with all conditions of any court ordered probation. If any Court finds that Licensee has violated the terms and conditions of her court ordered probation, such a finding of violation shall be deemed to be a violation of the Disciplinary Period. Werner shall report the finding of any such probation violation to the Board within 10 days of the Court's ruling and shall provide a copy of the Court's order to the Board within 10 days of her receipt of said ruling; and
- k. If Licensee undergoes any screening for controlled substances and Licensee receives notice that the test shows a positive result for any controlled substance for which Licensee does not possess a valid prescription, Licensee shall submit the results of any such screening with her written reports of compliance due by the terms of this Settlement Agreement.

21. The terms of this Settlement Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge or termination is sought.



22. Upon the expiration of the Disciplinary Period and successful completion of the the Disciplinary Period, Licensee's licenses shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may impose additional probation, suspend, revoke, or otherwise lawfully discipline Licensee's license(s).

23. The Board shall enter no order imposing further discipline on Licensee's license(s) without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

24. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

25. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of the Disciplinary Period occurred and, if so, may impose further discipline on the license(s) of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of the Disciplinary Period occurred.

26. Licensee, together with her heirs and assigns and its attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees,

agents or attorneys, including any former Board members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087 RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

27. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

28. Licensee understands that she may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's licenses. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit her request to: Administrative Hearing Commission, Truman State Office Building, P. O. Box 1557, Jefferson City, Missouri 65102.

29. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

30. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

Licensee

~~X~~ Kelley Annette Werner  
Kelley Annette Werner

Dated: 12/22/2015

Board

Sandy Sebastian  
Sandy Sebastian  
Executive Director  
State Board of Embalmers and Funeral Directors

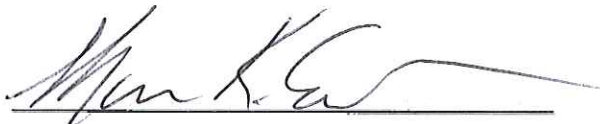
Dated: 1.25.2016

Approved:



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COUNSEL FOR THE BOARD

EFFECTIVE DATE  
2.9.2016  
STATE BOARD OF EMBALMERS  
AND FUNERAL DIRECTORS